

EXHIBIT 45

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE

3 _____
4 NIKKI BOLLINGER GRAE,
5 Individually and on Behalf of
6 All Others Similarly Situated,
7 Plaintiff,

8 vs. Civil Action No. 3:16-CV-02267

9 CORRECTIONS CORPORATION OF AMERICA,
10 et al.,
11 _____
12 Defendants.

13 CONFIDENTIAL

14 Videotaped Deposition of PATRICK SWINDLE - 30(b)(6)

15 Taken on behalf of the Plaintiff
16 January 9, 2019

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23 Reported by:
24 JEANNIE CHAFFIN, LCR
25 Job No. 10050083

1 A P P E A R A N C E S

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26 Also Present:

27 MR. DANIEL GIBBONS, Videographer

1 witness.

2 MR. PETTIS: Eric Pettis, Latham and
3 Watkins, on behalf of the Defendants and the witness.

4 THE VIDEOGRAPHER: The court reporter
5 today is Jeannie Chaffin, and she may now swear in
6 the deponent.

7

8 * * *

9 PATRICK SWINDLE,
10 was called as a witness and having first been duly
11 sworn, testified as follows:

12

13 EXAMINATION

14 QUESTIONS BY MR. WOOD:

15 Q. Good morning, Mr. Swindle.

16 A. Good morning.

17 Q. Could you just state your full name for the
18 record, please?

19 A. Sure. It's Patrick David Swindle.

20 Q. Thanks.

21 And you've had your deposition taken before;
22 is that right?

23 A. I've been deposed before.

24 Q. How many times, approximately?

25 A. Just once.

1 grounds that it calls for an expert opinion.

2 BY MR. WOOD:

3 Q. Okay. You can answer.

4 A. So I would say it would be subject to -- to
5 expert review, in terms of the correlations of
6 alleged losses being directly or proximally caused.

7 Q. Let me -- let me try asking it a different
8 way.

9 Does the -- what's the -- does the company
10 have a position as to whether or not Plaintiffs'
11 losses were caused by someone other than the
12 Defendants?

13 MR. GLENNON: Same objection.

14 THE WITNESS: We believe the decline in
15 the stock price that occurred was the direct result
16 of the Deputy Attorney General issuing a memo that
17 indicated -- or gave direction to the BOP to reduce
18 its use of the private sector over time.

19 So that singular event created the market
20 disruption, we believe, that we saw. The correlation
21 between that event and the prior events at any of the
22 facilities, we don't agree are correlated. In other
23 words, the DAG's -- the Deputy Attorney General's
24 memo itself, we believe, was motivated for -- by
25 factors other than absolute performance of either

1 ourselves or the private sector.

2 BY MR. WOOD:

3 Q. And what were those motivations?

4 A. We believed that there was a direct political
5 motivation that resulted in that memo being released.
6 If you look in -- if you sort of put the year into
7 context.

8 So we're in a presidential election year.
9 The Bernie Sanders' campaign had come out openly
10 against privatization of the private prisons. The
11 basis for that wasn't necessarily expressed, other
12 than from a perspective of philosophy, they disagreed
13 with the existence of our industry.

14 Hillary Clinton later, in that campaign
15 cycle, also adopted the same strong position around
16 private prisons. We became very politically relevant
17 in a way that the industry had not been historically.

18 And when you look at the dynamics between
19 the platform position the Democratic candidates had
20 taken relative to our industry, it certainly created
21 political motivations to be much more aggressive and
22 I -- frankly, move the Bureau of Prisons away from
23 use of private sector because that was possible.

24 So -- and by that, what I mean is, the
25 Department of Justice has responsibility for two

1 large law enforcement organizations: US Marshal
2 Service and the Bureau of Prisons. The direction
3 that was given specifically was with the Bureau of
4 Prisons.

5 That Bureau of Prisons guidance, we
6 believe, was possible because of the significant
7 reduction that occurred in the Bureau of Prisons
8 populations as a result of the change in sentencing
9 guidelines between crack and powder cocaine
10 sentencing.

11 And so the BOP populations had declined.
12 Private sector populations were beginning to decline.
13 The combination of those two things created lesser
14 demand, which allowed for the Department to pull back
15 from use of the beds, irrespective of any other
16 competing factor.

17 Q. And who do you think was responsible for that
18 decision, for the decision to issue the Yates memo?

19 MR. GLENNON: Objection.

20 THE WITNESS: Well, I can't speak to
21 that. Deputy Attorney General Yates issued the memo,
22 and I haven't been a party to, you know, how that
23 decision was made, who participated in the decision
24 to -- to make that announcement in that way.

25 ///

1 reasonably have.

2 Beyond that, I -- I, for example, would
3 look at the OIG report and the BOP's response to the
4 OIG report. There -- had the BOP read that report
5 and interpreted it as experts that -- that anything
6 identified in that report should have resulted in a
7 reduction or elimination of use of the private
8 sector, they could easily have provided that as their
9 response in that report.

10 There were four specific areas of
11 guidance given. One of them was around reviewing the
12 data. So we -- we, as the OIG, as non-correctional
13 investigators, have evaluated this data. It says
14 something to us. We're not sure quite what to make
15 of it. You need to put together a working group to
16 understand it because you're the experts and decide
17 whether you should take some action.

18 So I -- I look at the conclusions of that
19 report not as being final guidance. It's more, we
20 see this. You should go look at it. You should look
21 at that and evaluate it. So I didn't interpret that
22 as a definitive solution -- conclusion, even by the
23 OIG around use of the private sector.

24 Then in terms of the day-to-day
25 management, it's very common for the OIG to go in and

1 review the Bureau of Prisons. So it isn't unique for
2 the OIG to investigate or do a review of a specific
3 area to provide guidance, provide feedback. And so
4 I -- I look at that -- especially the guidance around
5 contract management and contract oversight and the
6 guidance around the steps they should take as
7 somewhat normal course guidance to the BOP, similar
8 to what they received in other similar inquiries
9 unrelated to the private sector.

10 So I -- I wouldn't interpret -- or at
11 least I -- I haven't -- the company doesn't interpret
12 the -- that report or the circumstances around the
13 report as being indicative of a quality failing that
14 would cause the Deputy Attorney General to -- or the
15 Bureau of Prisons, rather, to need to step away from
16 our sector.

17 Q. CCA had received information from the BOP
18 that the BOP was unhappy with the quality at some of
19 its facilities, right?

20 MR. GLENNON: Objection, vague.

21 THE WITNESS: So in terms of -- so has
22 the BOP received -- I mean has, of course, CCA,
23 rather, received feedback regarding quality of our
24 BOP operations. I would say absolutely. We receive
25 it through many mechanism.

1 So if you think about the way that our
2 contracts are constructed and the way oversight's
3 constructed with BOP, which that somewhat links to
4 the -- the -- the OIG report, I think it's important
5 to understand how we construct the -- the -- the
6 operations facility.

7 So we -- at the beginning of a contract,
8 there will be an RFP issued. That RFP includes
9 statement of work. So these are the requirements of
10 the operation that you must provide. We bid based on
11 the statement of work. So we will price the contract
12 and bid based on the statement of work. And it will
13 be the operating model for us at the facility.

14 We translate that statement of work into
15 policies. The policies are then utilized to direct
16 management of the facility. The policies are
17 approved by the Bureau of Prisons. So in policy
18 implementation, there is -- there is an approval from
19 the agency around the implementation of those
20 policies.

21 We have -- our facility leader, so our
22 warden, is primarily responsible for the contract
23 compliance of those individual locations. So they
24 individually have that responsibility to ensure
25 compliance, and they are supportive of the quality

1 assurance manager.

2 So if you were to look at how do we
3 manage contract compliance and how do we manage and
4 ensure operations are compliant, we -- we have the
5 warden, the quality assurance manager, and the
6 policies based off the statement of work.

7 Then locally, we have the representatives
8 from the Bureau of Prisons. So at every Bureau of
9 Prisons locations, they have a team anywhere from two
10 to four people that are actively engaged on a daily
11 basis, providing oversight. They walk around with
12 the warden. They analyze areas. They can -- they
13 have full access to the facility, so it's
14 nonrestricted. And they evaluate how effective we're
15 managing as an organization and how effectively we're
16 managing our facilities.

17 Those folks do tend to be -- have
18 correctional orientation, so their background is
19 largely corrections because the primary mission is
20 safety and security and public safety of the
21 facility. But those individuals do have primary
22 oversight responsibility.

23 So the first sort of line of defense or
24 mode of communication is direct communication between
25 us and the local monitors. It's at the field level.

1 Then outside of that day-to-day
2 communication, there's an opportunity for them to
3 provide more formal feedback. They can provide --
4 they can provide letters. They can provide NOCs.
5 The contract determines what would differentiate
6 between a letter and a NOC, in terms of what would
7 specifically trigger a note -- I'm sorry, a notice of
8 concern. Yeah, a NOC.

9 Q. Yep.

10 A. What would specifically trigger a notice of
11 concern versus a letter of inquiry -- or a letter of
12 information or direction that would cause us to
13 correct a very specific area. So there -- there's an
14 active engagement by the teams and by the local
15 monitors and then by the contract manager oversight
16 team to ensure compliance.

17 Annually, the BOP will conduct a CFM. So
18 it's -- that -- that CFM is an annual audit of the
19 operation of the facility. There are a large number
20 of items that they reviewed during that audit. And
21 so that's another touch point.

22 So primary is day-to-day active, open
23 dialogue communication with the facility team,
24 direction to the facility team. Then BOP, as a
25 parent, annually comes in and does a review and says,

1 these are the areas that we find that you may be not
2 compliant, or these are the areas where you're
3 very -- you're doing a very good job. So that CFM
4 process provides us with feedback.

5 In addition to the CFM, then you have
6 the -- the CPAR, which I mentioned earlier, which is
7 an annual contract review, and that's the contracting
8 officer. So there are multiple sort of vehicles for
9 us to receive feedback regarding our operation.

10 What -- what I'd say about operations for
11 the BOP, and it's just really operations in
12 corrections, it's -- it's extraordinarily rare,
13 public or private, to have an operation that has no
14 deficiencies in any audit area. So it's -- it --
15 it's not uncommon to have deficiencies in those
16 areas.

17 And so what we do use those deficiencies
18 for, it's not to say that a deficiency is an
19 indictment of our operation. It certainly would be
20 an indication of a need for an area of improvement,
21 an area of focus, and an area that -- that -- that we
22 can obviously improve our compliance in. But it --
23 one can't construe an audit finding necessarily as an
24 indication of displeasure. It's an indication of
25 noncompliance.

1 Persistent noncompliance is obviously a
2 different issue. That can translate into a cure
3 notice. During my time with the company, I'm only
4 aware of one cure notice with the Bureau of Prisons,
5 which is in our Cibola facility, which had a
6 persistent nagging issue in the delivery of a
7 particular area of health services.

8 And so a cure notice is a mechanism that
9 the BOP has if they escalate to indicate a higher
10 level of displeasure and really to direct the -- the
11 correction occur or some contract action may be
12 taken. And so we have an opportunity when we receive
13 a cure notice to respond, fix the issues, or the
14 contract may be cancelled. And so they -- they have
15 the option, once triggering the cure notice, to
16 cancel the contract.

17 There's also a termination for
18 convenience provision in the contract that's
19 available to them. So they can't without cause
20 terminate. So they always -- my understanding is the
21 Bureau of Prisons has the ability to terminate if
22 they have significant displeasure with an event.
23 We've seen that occur within the industry, so we know
24 what that looks like.

25 We understand -- not -- not with

1 CoreCivic, with -- with a competitive provider. But
2 we know that if the BOP is significantly displeased,
3 they have the capability at any time. And so they
4 can at any point cancel a contract if they chose and
5 have done that.

6 So in terms of the -- were we aware that
7 there were deficiencies, I would say, yes, we're
8 aware that there are deficiencies. We're also aware
9 that we were deploying significant resources to
10 resolve those deficiencies via normal course. And
11 the deficiencies and the types were not of such a
12 level that would cause us to think that BOP would
13 perceive that there's a systematic variation in their
14 operation that would meaningfully deviate from what
15 they experience in their own system.

16 Q. Another way to get feedback from the BOP
17 would be debriefing on a contract bid, right?

18 A. Yes.

19 Q. And can you explain how that would work?

20 A. So if we were to bid for a contract and we
21 would be unsuccessful on that bid, the -- it's a very
22 close process, so they run a very regimented -- the
23 BOP runs a very regimented process. They have direct
24 communication through our contract management group
25 as we go through the processes. So all feedback that

1 we're provided is very formal.

2 Then the -- an award selection occurs. A
3 formal award debrief, I don't recall having one of
4 those, but I wouldn't have been a participant in that
5 conversation. It could occur on a formal or informal
6 basis, I suppose, and that would be with -- it would
7 be with our partnership development team if that were
8 to occur.

9 Q. So, like, for Northeast Ohio, for example,
10 were you involved in the debriefing after that bid?

11 A. I was not.

12 Q. Okay. Do you know anything about it?

13 A. About Northeast Ohio?

14 Q. Yeah.

15 A. Northeast Ohio was a -- it was a very
16 well-run facility, had a very strong track record of
17 performance.

18 One of the dynamics around the Northeast
19 Ohio bid that was challenging for us is Location 1.
20 It's in a very high wage determination location. So
21 the Department of Labor sets wages for the
22 procurements that the BOP issues.

23 And so the BOP will designate a -- well,
24 they will ask for submissions. We submit our
25 locations. They then seek an environmental

1 assessment or a review of the local environment and
2 wage determination from the Department of Labor.

3 Department of Labor provides those wages
4 to the Bureau of Prisons -- Bureau of Prisons, who
5 they then provide to us, and that's the basis for the
6 salary assumptions that we have in our pricing
7 models. And so it's set very specifically by the
8 Department of Labor.

9 I raise that as Northeast Ohio was a
10 high-cost labor market relative to many other markets
11 in the US. And so if you compare the northeast
12 region to Texas or northeast region to Louisiana or
13 to Mississippi, you see significantly higher wage
14 structures.

15 The second issue that we have at
16 Northeast Ohio is separation of the compound. So at
17 Northeast Ohio, we have Marshal service and the BOP.
18 The BOP was -- has been very specific about the
19 preference of having a single dedicated compound.

20 We believe, because of the history and
21 the strength of the operation at that facility, we
22 would be able to overcome that aversion because we
23 have evidenced history of operating the facility in
24 its current state. But those were two roadblocks
25 that we had in particular. And it sets pricing only

1 because we knew going in that it was one of the
2 higher cost environments that the BOP operates in.

3 Q. Well, another issue was CCA's historical
4 quality issues, right?

5 MR. GLENNON: Objection, foundation.

6 THE WITNESS: Well, so -- could you be
7 more specific?

8 BY MR. WOOD:

9 Q. Sure.

10 When the -- when the BOP debriefed CCA about
11 why CCA didn't get the Northeast Ohio bid, one of the
12 reasons they gave was the quality problems that CCA
13 was having at other BOP facilities, right?

14 MR. GLENNON: Objection, foundation.

15 THE WITNESS: I wasn't a participant in
16 the conversation, so I -- I didn't receive that
17 feedback.

18 BY MR. WOOD:

19 Q. Okay. Fair enough. All right.

20 THE REPORTER: I'll ask that you slow
21 down, please.

22 THE WITNESS: Okay.

23 THE REPORTER: Thank you.

24 BY MR. WOOD:

25 Q. Why don't we go to Number -- the seventh

1 affirmative defense, which says knowledge. And then
2 on -- on Page 31, top of Page 32, it says, "The
3 individual Defendants had no knowledge of or
4 reasonable ground to believe in the existence of the
5 facts alleged on which the liability of the company
6 is based."

7 Do you see that?

8 A. Yes.

9 Q. And what's the -- what's the company's
10 factual basis for that affirmative defense?

11 A. I want to make sure that -- so -- that I
12 fully understand the statement.

13 So "The individual Defendants had no
14 knowledge of or reasonable ground to believe in the
15 existence of the facts alleged on which the liability
16 is based."

17 The liability of the company is based on
18 the belief that the company has withheld information
19 regarding the quality of its operations. So in
20 viewing it through that lens, I -- I would look at
21 this and say, we believe that the decision that was
22 made by the Deputy Attorney General was made
23 independent of the quality of operations of the
24 Bureau of Prisons -- of our operation of the BOP.

25 When you looked at the OIG report, there

1 activation, if there was a disturbance, the cost
2 associated with those events would be backed out to
3 provide sort of a base per diem cost. That --
4 that -- that's very difficult for us to see into.

5 So, you know, we -- we can look at it on
6 its face and say their report says we're cheaper.
7 You add cost of construction, you add retirement
8 benefits, you add legal expense, then it's very clear
9 that they're substantially more expensive than us.

10 And then intuitively, what we know from a
11 cost and construction standpoint, if we're building
12 beds, you know, 50 to 70, they're building beds 175,
13 they made appropriation requests north of 300 for
14 Letcher County, Kentucky, we know that the capital
15 component, apples-to-apples, is going to be cheaper
16 with us. So putting all those pieces together, it
17 makes us confident that we're substantially cheaper
18 than the Bureau of Prisons.

19 Q. Was there a specific point at which an
20 analysis was done where CCA said, okay, let's --
21 let's look at this and -- and -- and figure out what
22 these numbers are?

23 A. Yes.

24 Q. And when was that?

25 A. Let's see. That would have been done -- I

1 can't tell you the precise year. I can tell you the
2 precise marker, which would be when Harley was coming
3 into the role of chief corrections officer.

4 Q. And when -- so when Mr. Lappin was coming in,
5 there was a specific undertaking of putting that
6 analysis together?

7 A. Yes.

8 Q. And who was involved in that?

9 A. Eric Rasmussen.

10 Q. And who is he?

11 A. Eric is the managing director of strategic
12 development. Eric also -- he reported to me during
13 that time. And so as part of my team, I mentioned
14 the analytical team, we developed that document.

15 Q. So you were involved in it as well?

16 A. Well, it was under my purview. Eric did the
17 work.

18 Q. Anyone else other than Eric that was involved
19 in that?

20 A. I -- I can't speak to whom -- so Eric reports
21 to me. Eric would -- he -- he's very independent, so
22 he would work across the organization. There's
23 documents that were needed, so it's possible he would
24 solicit feedback from others, but I can't speak to
25 who they would be. Because he -- he did the

1 analytical work. He did the work around
2 appropriations. Harley provided feedback as we were
3 reviewing with him because it was really to help us
4 baseline based on his knowledge and understanding.

5 This is what we think. Is what we think right?

6 And the -- the only external participant
7 that would have been engaged was Bill Dalius during
8 his transition from the BOP. Prior to arriving at
9 CoreCivic, had a consulting firm, Perimeter --
10 Perimeter Consulting, I believe was the -- the group.
11 And so he did provide feedback to Eric as well.

12 Q. And was there a -- like a -- was there a
13 document that was produced at the end of that process
14 kind of laying out the analysis?

15 A. Yes.

16 Q. Do you know what it was called?

17 A. I do not.

18 Q. Do you -- did you receive it?

19 A. Yes.

20 Q. Do you know who else got it?

21 A. I am certain that I would have had that
22 document. Todd Mullenger would have had that
23 document. Harley would have had the document. We
24 had the conversation independent of Damon, so this
25 was more of a conversation for us to make sure that

1 we understood the cost of the BOP.

2 So it's possible that Damon received it,
3 as well, or that others may have. But in terms of
4 the specific conversation, I -- I recall
5 participating in a conversation with Harley; Harley,
6 myself, Eric, and Todd. I don't recall others having
7 participated in that.

8 Q. What was the purpose of doing that analysis?

9 A. Validation of what we believed the Bureau's
10 cost to be. So in other words, they -- they stated
11 in a public document what their costs are. We
12 believed those costs are higher. So how much higher
13 are they. It's just helpful to know that.

14 Q. Well, so what was done with that information?
15 After -- after this document was prepared, was
16 this -- was it communicated to other folks outside of
17 CCA?

18 A. Not to my knowledge. I don't know that it
19 wasn't, but it certainly wouldn't have been as a
20 result of the -- the approach that we used within
21 the -- the -- within the team that we had.

22 So what -- one -- one of the questions we
23 always have with any of our partners is, is there an
24 opportunity in an area to grow. So with BOP, the
25 questions that we would have as a company are, is

1 that plan into a specific policy that's implemented
2 at the local level.

3 The execution of that plan or the
4 requirement from a statement of work are managed
5 locally by the warden, the QA manager, and department
6 heads within their specific areas of expertise.

7 So you have basically the contract broken
8 down into its components, translated into policies
9 and procedures, and then ultimately implemented by
10 department heads at the facility level.

11 Q. And is there a process within CCA for kind of
12 -- for auditing compliance with the contract
13 requirements?

14 A. Yes. That would be the contract compliance
15 function that exists with Don Murray. So
16 Don Murray's team would evaluate -- they would send
17 out a team similar to the -- similar to the BOP with
18 the CFM process is our own internal process to help
19 us understand, are we complaint. So their audit
20 instrument is more expansive than just the BOP
21 requirement, so they have a higher standard. I
22 wouldn't say higher standard. They have a number of
23 additional areas beyond just the CFM or beyond the
24 contract requirements and the issues that would be
25 covered in the CFM, but their review does include the

1 CFM items.

2 Q. So when they are doing their review, part of
3 what they are doing -- part of their audit tool
4 includes anything that's in the -- any contractual
5 requirements in the statement of work are going to be
6 translated into that audit tool to make sure that
7 there's compliance?

8 A. Generally, yes. And so I'll give you the
9 exception. We have over time translated from a
10 companywide audit tool to a contract-specific
11 auditing tool. So the spirit initially in the CFM
12 was really the basis for our initial audit
13 development. So if you go back to the history of the
14 development of our audit function within CoreCivic,
15 it was based off and replicates -- based off of the
16 structure of the BOP's process and approach and
17 largely amplification of the tool that the BOP uses.
18 So it was a foundational item that we used in
19 development of our own audit tool.

20 So I would say I would expect that the
21 majority of the CFM items, if not all, would be
22 reflected in that tool. What I can say is today, it
23 absolutely aligns 100 percent. There may have been
24 times in the past where you would have seen
25 deviations between our tool and the BOP tool, in

1 terms of specificity in a particular area. The
2 spirit would have been the same. The goal would have
3 been to evaluate performance of both. If anything,
4 we probably would have had a higher standard set than
5 would have been reflected in the customer tool -- the
6 customer audit tool.

7 Q. Okay.

8 A. And I probably should say, by referencing
9 audit tool, what I'm specifically referring to is the
10 instrument that translates the specific requirements
11 of the contract into each subject matter area of
12 responsibility.

13 Q. And who would be responsible for going
14 through the contract with the BOP and, I guess,
15 assigning different portions of compliance to
16 different people?

17 A. So the statement of work for the BOP is --
18 because we only house criminal aliens for the BOP --

19 Q. Yep.

20 A. -- the statement of work is very similar from
21 BOP from facility to facility. So when you look at
22 the development of policy for the BOP, you're
23 generally going to be implementing the same policy
24 that's been implemented at a prior location at a new
25 location. And so if you were to think about policy

1 development for a completely new customer, there's
2 very active engagement of policy team actually
3 creating the processes and approaches and tools used
4 so we meet that customer's expectations. Because we
5 already have the statement of work built for the BOP,
6 we're able to leverage off that experience. And so
7 we translate that statement of work to a facility,
8 which is a significant amount of work still, but we
9 have a basis from which to look at the historical
10 operationalizing of the plan.

11 And so the compliance -- the policy team
12 will take the contract, they will translate those
13 into the specific action items or policy items.
14 Policy will be implemented at the facility. So the
15 warden owns that policy deployment is coordinating
16 with the quality assurance manager, the QAM at the
17 facility, and then they are educating department
18 heads on their responsibilities.

19 At the time of an activation, there is an
20 active education effort that extends beyond the core
21 facility team. So if you have a stable facility
22 that's operating normally and there's a policy
23 change, they are going to implement that as part of
24 normal course. During an activation, there's a team
25 that comes onboard to support the local team so that

1 A. Well, I'm not an attorney, but the way I
2 would interpret the statement is, unless it's
3 specified, we are required to follow the most current
4 edition of the American Correctional Association
5 standards for adult correctional institutions. So
6 ACI/ACI standards -- ACA and ACI standards. That
7 doesn't explicitly say in this place that we must be
8 ACA accredited, but it does say we must follow all
9 standards.

10 Now, it may say elsewhere that we must be
11 accredited. And they are arguably one in the same,
12 with the exception of if we're compliant then -- and
13 we receive accreditation, then accreditation
14 validates that compliance.

15 Q. Right.

16 Right. So page -- I'm sorry. Page 17 under
17 general administration, on line 21, it says the
18 contract is required to perform in accordance with
19 the most current editions of the ACA, ACI standards,
20 right?

21 A. That's right.

22 Q. Okay. And so how does -- how does CCA
23 determine whether or not they are complying with the
24 ACA, ACI standards?

25 A. So as we develop the audit plan or the audit

1 tool and implement the audit tool, we reflect any
2 standard that's not captured within the statement of
3 work specifically but is required either directly or
4 indirectly by that statement of work into that audit
5 tool.

6 So in a facility where we either have to
7 be ACA accredited or we choose to be ACA accredited,
8 we would audit compliance with the ACA
9 accreditations. And we have teams in place within --
10 that the QA team, rather, helps our teams evaluate
11 accreditation independent of but also a part of the
12 normal annual audit process.

13 Q. And then the ACA also comes in on a periodic
14 basis to actually do the accreditation, right?

15 A. Oh, absolutely, yes.

16 Q. And how often does that -- how often do
17 the ACA accreditations occur in the BOP facilities?

18 A. My understanding is that ACA accreditation is
19 on a three-year cycle. So there's a rolling
20 accreditation. I would want to confirm that, but I
21 believe that it's a three-year rolling review.

22 Q. Okay. The bottom of page 17 says the
23 contractor's responsible for development and the
24 administration of a comprehensive quality control
25 program.

1 Do you see that?

2 A. Yes.

3 Q. And what is that program at CCA?

4 A. So the quality control program, the way we
5 approach quality -- it's somewhat an extension and
6 also a restatement of what we talked about earlier,
7 in terms of the way that we approach quality.

8 So quality starts with the manager. So
9 it starts with, has the warden operationalized the
10 contract and his team, educated department heads on
11 their responsibilities. So that's management
12 execution. That isn't quality control. But that's
13 the first step, is to make sure there's a full,
14 complete understanding of the contractual
15 requirements they have.

16 The QA manager is the individual that's
17 onsite locally to help facilitate that. So the QA
18 manager typically reports to the warden. They are
19 jointly responsible for ensuring the department heads
20 are acting in a way that's compliant with the
21 contract. They are educating those that aren't.
22 They are working through plans of action to the
23 extent that those plans of action need to be created,
24 and then tracking and monitoring those -- self
25 monitoring locally. So that role is really the

1 "those," that would be the QA manager, that's the
2 warden with support from our quality assurance team.

3 Q. Does CCA have -- during the class period, did
4 it have any policies and procedures for self
5 reporting contractual violations to the BOP?

6 A. Do we have policies for self reporting to
7 track -- so if we perform an audit, would we provide
8 that audit to the Bureau of Prisons?

9 Q. Sure.

10 A. Self audit?

11 My understanding is that is the case
12 because we've received feedback from time to time
13 that our audit was more expansive than the CFM. So
14 my presumption is if that, in fact, does occur, if
15 we're contractually bound to provide it, we would
16 provide it. The SSIM is onsite, so they are aware
17 when we audit. We don't withhold information from
18 the Bureau of Prisons. So to the extent that a team
19 is onsite doing an audit, there's going to be full
20 awareness of the outbriefing from that.

21 So I don't -- I can't answer the question
22 of was there a formal policy or approach. There may
23 have been. What I can say is that it would be
24 impossible for us to do an audit onsite without the
25 BOP's awareness and familiarity. And I would expect

1 that the SSIMs would be fully apprised of those
2 findings.

3 Q. Okay. If you turn to page 43 of the -- of
4 Exhibit 39, page 43 begins a section regarding
5 healthcare. Do you see that?

6 A. Yes.

7 Q. And it says that CCA has to meet the
8 standards of the ACA and the joint commission; is
9 that right?

10 A. Yes.

11 Q. And how does CCA determine whether or not
12 they are in -- with respect to healthcare, in
13 compliance with the ACA and the joint commission
14 standards?

15 A. Very similar to general compliance with a
16 dedicated team on the -- within quality assurance to
17 evaluate healthcare delivery.

18 Now, from an administration perspective,
19 the responsibility looks a bit different because the
20 specialization of healthcare. And so by that, I mean
21 you've got clinical care oversight that is provided
22 by the physician. So our CMO would give physician
23 guidance, make hiring determinations of the
24 individual physician, would give care guidance, would
25 manage the physician and nurse practitioner delivery

1 of care.

2 You have regional health services
3 administrators, so I reference the managing
4 directors. They are responsible for correctional
5 service delivery. We have regional health services
6 administrators that support the local health services
7 administrators because of the complexity of
8 healthcare delivery.

9 So as we talk about a warden having full
10 responsibility for the operation and compliance of
11 the facility, there's certain areas where our wardens
12 are very, very strong and you would expect they would
13 be strong. Medical is a unique care delivery area,
14 so therefore we support it with additional regional
15 support via the health services team to help maintain
16 compliance, to ensure provider coverage is adequate,
17 to provide guidance to the team and support as needed
18 in those areas where there may be opportunities for
19 improvement.

20 So the balance of the review is similar,
21 as I described. Quality assurance manager is
22 reviewing healthcare similar to other areas. Warden
23 has primary responsibility but can't ultimately
24 direct care or care delivery processes. The CMO and
25 the health services team -- particularly the regional

1 health services administrator -- are there to
2 educate, help develop processes, manage care
3 delivery, and give guidance.

4 Q. All right. And the joint commission comes in
5 and does audits, too; is that right?

6 A. I believe that to be the case. But I -- yes.

7 Q. Okay. Do you know how often they -- they
8 perform their audits or accreditation?

9 A. I do not.

10 Q. Okay.

11 A. I would add that similar to the conversation
12 around the ACA, the audit tool as developed by our
13 quality assurance department, would embed all
14 underlying requirements of -- in this case joint
15 commission standard. So to the extent that the
16 medical provisions in the contract didn't fully
17 capture joint commission, joint commission would be
18 captured in the company area of the audit tool.

19 Q. Okay. And so CCA has a chief medical
20 officer; is that right?

21 A. That's correct.

22 Q. And what is his or her responsibility?

23 A. The chief medical officer has primary
24 responsibility for care oversight guidance and hiring
25 and education of physicians, as a primary role.

1 Q. Is there a -- is there a budget that the CMO
2 oversees?

3 A. The -- the budget that the CMO has
4 responsibility for would be embedded within the
5 facility budget that's developed annually. The
6 individual -- the CMO would then make decisions when
7 there are vacancies based on his or her determination
8 of market, availability of physicians, the need to
9 pay something different than that. And so I would
10 say the CMO is acting with discretion in terms of
11 making that decision, irrespective of the budget. It
12 may be impacted by the budget, but I'm not aware of a
13 time when leadership has gone to the CMO and said you
14 can't hire a physician. Not saying that hasn't
15 happened, but I'm not aware of it in my exposure with
16 the organization.

17 Q. And do you know who reports directly to the
18 -- well, who -- does the CMO report to the CEO?

19 A. The CEO, no. The vice president of health
20 services is a -- so we have a physician -- a PC. So
21 the leader of the physician corporation is the CMO.
22 Our manager of health services delivery would be our
23 vice president of health services. The vice
24 president of health services coordinates with the
25 CMO. The health services -- VP of health services

1 and of ourselves throughout that period.

2 Q. Okay.

3 MR. GLENNON: Chris, we've been going for
4 an hour. Can we take just like a two-minute break,
5 please?

6 MR. WOOD: Sure.

7 MR. GLENNON: Thank you.

8 THE VIDEOGRAPHER: We are off the record
9 at 1:57 p.m.

10 (Short break.)

11 THE VIDEOGRAPHER: We are on the record
12 at 2:07 p.m.

13 BY MR. WOOD:

14 Q. I'm going to ask some questions related to
15 Topic Number 4 in the notice, which in general is
16 about communications with government agencies
17 concerning the allegations in the complaint and
18 communications and interactions regarding BOP
19 prisons.

20 So the first part of that I'd like to talk
21 about is the Yates memo. Did CCA have -- so if you
22 put aside the BOP, did CCA have communications with
23 other government agencies about the Yates memo after
24 it was issued?

25 A. Communications after the memo was issued?

1 Q. Yeah.

2 A. I'm not aware of communications with other
3 government agencies after the issuance. But that
4 doesn't mean that it wouldn't have occurred.

5 Q. Okay.

6 A. So in other words, I -- on a post-memo basis,
7 I'm not aware of a communication.

8 Q. Well, did CCA -- did CCA know about the Yates
9 memo before it was issued?

10 A. So from a timeline standpoint, the first time
11 to my knowledge that we became aware of the memo was
12 the morning the BOP scheduled a call that the memo
13 was issued, with all the private sector providers.
14 Ourselves, GEO, MTC scheduled the call, disclosed,
15 indicated that -- very shortly that that memo was
16 going to be released publicly.

17 Q. And that there would be a Washington Post
18 article about it, right?

19 A. Yes, correct.

20 Q. And that was the first time that CCA knew
21 that the memo was going to be issues?

22 A. Yes.

23 Q. Okay. So did -- well, so you -- CCA couldn't
24 have talked to anyone about the Yates memo before it
25 was issued, apart from during that call; is that

1 right? Is that the first time?

2 A. That's my understanding, yes.

3 Q. Okay. So just -- and just to be clear, I
4 think I understand what you're saying. But CCA
5 didn't talk with -- hasn't talked with anyone at ICE,
6 for example, about the Yates memo at all, right?

7 A. Well, from a -- so -- in the aftermath of the
8 Yates memo, one of the -- so one of the areas of
9 confusion that I think was created -- certainly
10 created this location with the stock prices were sort
11 of twofold.

12 One of them is stroke of the pen. So can
13 the federal government decide sort of on a -- on a
14 whim to elect to discontinue use of the private
15 sector. So can that happen.

16 The other was not a clear understanding
17 of federal contracting relationships that we have
18 with the Bureau of Prisons, with ICE, and with the US
19 Marshal Service.

20 So in terms of questions of conversations
21 about Yates memo, it would certainly behoove us to
22 have conversations with the Marshal Service and ICE
23 to try to understand if there are going to be
24 follow-on impacts of that memo.

25 So did we discuss -- I guess I

1 If I look at the absolute reduction in
2 populations that we've seen from peak with the
3 Bureau, I think what you've seen is approximately
4 40,000 aggregate inmate population. Private sector
5 is approximately 4,000, if I look over the same
6 period. So the private sector, actually, bed-count
7 number has diminished. It wouldn't seem to have
8 diminished in a way that would indicate that the last
9 bed is a criminal alien bed, which, again, then makes
10 it important to understand the specific population
11 subgroup dynamics.

12 And so I can't correlate exactly
13 population declines in the BOP with population
14 declines for the CAR population.

15 Q. Okay. If your -- you mentioned the requests
16 the BOP makes for funding to Congress, right? Which
17 will have per diem amounts in there; is that right?

18 A. Well, they -- they request a budget. So the
19 Bureau of Prisons would request a budget for a fiscal
20 year. And there would be an operating budget, and
21 that would be a capital budget. So the support
22 that's provided would be the support that would
23 result -- that would drive the funding request from
24 Congress. And so the BOP would be making that
25 request with the documentation that they used to do

1 the cost comparisons.

2 Q. And that's an annual process, right?

3 A. Well, if Congress were to work as you would
4 expect, with annual budgets, yes, that's an annual
5 process. The communication is annually. Sometimes
6 continuing resolutions occur, as opposed to a new
7 budget. So you sometimes will see a continuing
8 resolution that would carry funding over at
9 prior-year levels. And so that doesn't mean that
10 there wouldn't be active dialogue between the CFO of
11 the BOP and Congressional Budget Appropriation
12 Committees to talk about a request. But it doesn't
13 guarantee or assure that there would be funding
14 provided, is my understanding.

15 I've never participated in that process,
16 but my understanding of the process is that they are
17 going to prepare the request every year. They are
18 going to go to the appropriators with the request.
19 If a new budget isn't approved, then there's a CR.
20 And if that CR doesn't include any additional
21 funding, then they have to figure out how to make
22 their operation work within the funded amounts.

23 Q. But if you're looking to compare the BOP per
24 diem with a CCA per diem, you're looking at that
25 annual request process documentation?

1 A. We would be looking at that documentation to
2 make an evaluation of, are we cheaper or not. On --
3 underneath -- assuming the cost comparison that we
4 described earlier, which is if our per diem is fully
5 loaded, we know theirs is not, it's sort of a gut
6 check for us to say we know we're cheaper if we're on
7 that document cheaper because of all the additional
8 cost components that are not included. So by
9 definition, we would have to be meaningfully cheaper
10 at that.

11 Q. Well, are there cost components that are
12 involved with the BOP's, like, monitoring of private
13 prisons that are not included within your per diem,
14 too?

15 A. Cost of monitoring. Yes, there would be cost
16 of monitoring. There's -- and, I mean, there's G&A
17 cost that we implicitly support. So I think you'd
18 have to look from a total cost structure perspective.
19 I'm pretty -- when you begin to -- and I think it
20 will be apparent in the report that we put together.
21 But when you look -- so I'll just use a quick
22 example.

23 Q. Yeah.

24 A. I don't -- I don't have a calculator.

25 So if you take -- if you take \$175,000

1 per bed for a 2,000 bed facility and you look at the
2 implied capital cost just of the recovery of capital
3 for that facility -- so I look at cost savings a few
4 ways. One way I look at cost savings is on an
5 operating budget basis, am I cheaper in this year
6 than the Bureau of Prisons. So let's just remove
7 capital.

8 Then the secondary -- the secondary
9 evaluation is around -- cost evaluation or cost
10 savings is, there's a certain permanence of whomever
11 constructs the facility. So if we construct the
12 facility, we construct the facility for potentially
13 an ten-year life. So the commitment that the Bureau
14 would be making to us is up to ten years. Really
15 base four, with three two-year renewals that's
16 cancelable. So we have a cancelable contract.

17 What we're giving them the flexibility to
18 do is, in effect, rent the facility. So their --
19 when I look at the cost savings that are accrued to
20 them, it is operating cost savings. But then one of
21 the most significant of the additional components is
22 that capital cost savings. Because if they can avoid
23 -- if we can embed in our per diem a 70- -- I'll just

■ [REDACTED]

2 capital. And they are building at 175,000 to 250,000
3 to -- Letcher County is over 300,000 a bed -- the
4 capital win is a meaningful cost savings.

5 And to the extent that the BOP policy --
6 to the extent policies drive continue to decline in
7 populations, then they've got the ability to rent the
8 beds from us and avoid the long-term capital expense
9 of that investment.

10 And so I would say that it -- so you've
11 got a day-one cost savings. So on just pure -- say
12 the day one -- current year operating cost savings,
13 or our -- or are our operating costs cheaper. We've
14 got plenty of data to support that.

15 And then multi-year, then it becomes a
16 function of are populations going to grow forever.
17 So in other words, is it a permanent capacity for the
18 BOP, or is it short-term capacity for the BOP. And I
19 would argue we're in a place, from a policy
20 perspective, where they are renting beds, in addition
21 to owning them. I'm sure they will make that
22 evaluation long term, should they build structural
23 capacity, should they build replacement capacity.
24 They've got to evaluate, do they take beds offline
25 that are really old and inefficient and very costly.

1 But I -- I would say just -- you know,
2 just from a cost comparison analysis, the combination
3 of sort of year-one operating savings and long-term
4 capital savings before I get to the other components
5 are meaningful.

6 And I think probably the best internal
7 expert who I spoke with in preparation for the
8 deposition around that would be Bill Dalius. Because
9 he would have the most familiarity with the way the
10 BOP would evaluate sort of that tradeoff of
11 short-term capital and long-term capital and
12 operating costs.

13 Q. Okay. And then in terms of comparing quality
14 of facilities between the BOP and CCA, what basis did
15 CCA have for making quality comparisons between its
16 facilities and the BOP?

17 A. So we have the ability internally to look at
18 quality on an absolute basis. So just from a
19 day-to-day operating basis, we can look on an
20 absolute basis as one of the largest correctional
21 systems and say, how does -- how does this quality
22 and how does it compare. That doesn't answer --
23 that's not responsive to the BOP question.

24 So what we can look at on an absolute
25 basis and say, you know, of the 500 items that the

1 BOP is reviewing in the CFM, how many deficiencies --
2 how many deficiencies do we have. If there's a
3 repeat, how common is that. If there's a persistent
4 repeat, how common is that. So we can look at those
5 things and use them as a basis for deploying
6 resources to resolve issues, and work with the
7 partner.

8 Part of our awareness of the familiarity
9 is also based on the employees that we have in our
10 organization. So Mr. Lappin, who was previously
11 director of the Bureau of Prisons, is very familiar,
12 based on his role and his work previously with the
13 program review, as to what the span or the -- sort of
14 the band of performance might be. So what would be
15 reasonable performance or not within the BOP, Bill
16 would have that ability. Ken White would have that
17 ability.

18 When you look at the historical team that
19 we had supporting our facilities, so Mike Nalley was
20 the regional director in the BOP, had that
21 visibility. So he had responsibility for a large
22 region within the BOP. Participated in CFMs. So he,
23 Harley, Kim -- so Mike, Harley, Bill, Kim,
24 Ron Thompson all at various points managed a
25 significant portion of the BOP operation.

C E R T I F I C A T E

STATE OF TENNESSEE

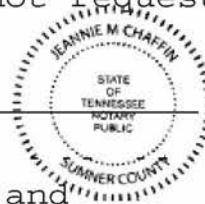
COUNTY OF SUMNER

I, JEANNIE CHAFFIN, Licensed Court Reporter, with offices in Portland, Tennessee, hereby certify that I reported the foregoing videotape deposition of PATRICK SWINDLE by machine shorthand to the best of my skills and abilities, and thereafter the same was reduced to typewritten form by me.

I further certify that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome of the proceedings.

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JEANNIE CHAFFIN, LCR

Associate Court Reporter and
Notary Public State of Tennessee

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